

him in court but hired them so that they would be unavailable to his opponent.⁴⁴ Bayard was represented by Iredell's brother-in-law Samuel Johnston and William R. Davie.

Iredell faced an ethical dilemma. He believed judicial review to be a necessary check against legislative excesses, but his acceptance of payment from Singleton seemingly prevented him from advocating that principle in Bayard's case. The records are incomplete and contradictory as to Iredell's specific role in *Bayard v. Singleton*. The official printed report of the case indicates that Iredell represented Bayard. But, as historian John Charles Waldrup has pointed out, the court dockets do not list Iredell as an attorney for the plaintiffs and there is no mention of the case in Iredell's account books.⁴⁵

What is certain, however, is that outside of the courtroom Iredell was an effective proponent of judicial review. Iredell proffered his arguments in a letter "To the Public," which appeared in a New Bern newspaper on August 17, 1786, as the superior court judges were pondering the *Bayard* case. Conscious of his awkward position in offering arguments that would aid Bayard after he had accepted a retainer from Singleton, Iredell begins his letter on a defensive note: "As the Question concerning the Power of the Assembly deeply concerns every Man in the state, I shall make no apology for delivering my Sentiments upon it." He then proceeds to concisely define the issue, describe and defend his solution, and dismantle opposing arguments. The essence of his argument is that the constitution is "the fundamental Law" and the legislature is its offspring. As such, a legislative "act inconsistent with the Constitution is void," and the court is obligated to rule accordingly.⁴⁶

During the May 1787 superior court term, the judges sanctioned judicial review by denying Singleton's motion for dismissal. This ruling and similar decisions by courts in other states prepared the way for the U.S. Supreme Court's endorsement of judicial review in *Marbury v. Madison* in 1803. Despite the superior court's ruling, Bayard and her siblings did not recover their father's holdings. The jury decided that when Cornell transferred his property to his family he was not a North Carolina citizen and therefore was not eligible to own property. Consequently, the state's seizure of his

⁴⁴Waldrup, "James Iredell," 264.

⁴⁵Waldrup, "James Iredell," 268.

⁴⁶See "To the Public," August 17, 1786, in this volume.